

On these facts we accordingly hold that the appellant's claim against the respondents under the policy is not time barred and that the arbitration proceedings must proceed. The appeal is allowed with costs.

Appeal allowed.

Solicitors: *Murphy & Dunbar; Rodyk & Davidson.*

MELVANI v. PUBLIC PROSECUTOR

[A.Cr.J. (Wee Chong Jin C.J.) March 17, 1971]

[Singapore — Magistrate Appeal No. 188 of 1970]

Criminal Law and Procedure — Plea of guilty — Mitigating factor — Good character — Consideration in assessing sentence.

Criminal Law and Procedure — Currency notes — Forgery — Trial judge importing his own view.

Where an accused person pleads guilty the court in assessing sentence ought to consider such a plea as a mitigating factor. What weight ought to be given by the court depends on the other facts made known to the court at the time the sentence is considered. Similarly good character is always a circumstance which a court ought to consider in assessing sentence.

In so far as arriving at a finding of facts as to whether a forged document, in this case a currency note, was or was not a good forgery, it was undesirable for the trial judge without the benefit of any evidence at all on the question to import his own view of the forgeries in question.

MAGISTRATE'S CRIMINAL APPEAL.

Dato' David Marshall (J. G. Advani with him) for the appellant.

Isaac Paul Ratnam (Deputy Public Prosecutor) for the respondent.

Wee Chong Jin C.J. (delivering oral judgment): The appellant was charged with 2 others of having committed the offence of having in their joint possession about \$10,000 worth of U.S. currency knowing the same to be counterfeit and intending to use them as genuine. All three pleaded guilty and the trial judge in accepting their pleas sentenced the other two accused to a term of imprisonment for two years but sentenced the appellant to imprisonment for a term of three years, the trial judge distinguishing his case on the ground that he was the main culprit and also because he had tried to mislead the court by informing the court through his counsel that the counterfeits were so well done as to be hardly distinguishable from genuine notes of the same denominations.

Before me, through his counsel, he has appealed against the sentence on the grounds that the trial judge ought to have taken his plea of guilty as a mitigating

A factor and ought not to have imported the trial judge's own view that the counterfeit notes were so badly made as to be obvious to the trial judge and therefore obvious to the appellant who had considerable experience in dealing with tourists and therefore personal knowledge of what are genuine U.S. currency notes. Another ground was that the trial judge failed to take into consideration the evidence of good character. In principle I consider it proper that where an accused person pleads guilty the court in assessing sentence ought to consider such a plea as a mitigating factor. What weight ought to be given by the court depends on the other facts made known to the court at the time the sentence is considered. Similarly good character is always a circumstance which a court ought to consider in assessing sentence.

As regards the other ground of appeal namely that it was wrong in law for the trial judge to reject the statement made on his behalf by his counsel that at the time when he accepted the notes in payment for the goods purchased from him he did not realise they were counterfeits merely on the trial judge's own view of the nature of the forgeries in question. I consider the point well taken in that in so far as arriving at the finding of facts as to whether the forged document, in this case a currency note, is or is not a good forgery, it is undesirable for a trial judge without the benefit of any evidence at all on the question to import his own view of the forgeries in question. This being the position as I see it I can properly review the sentence imposed when considering what is a proper sentence on the facts as appear in the record before me.

Now, the first factor is that his two other co-accused were sentenced to a term of two years' imprisonment. Although the appellant appeared to be the main culprit in that he started the chain of events which led to the other two accused coming into possession of the forgeries, on the face of the record, and this appears not to be contradicted, a reasonable explanation was given that he had received them in payment of goods sold by him. Taking into consideration the fact that he had pleaded guilty, the fact that he had a good character, the fact that for a person in his situation in life a sentence of imprisonment however short it may be would be a real punishment for this offence in every sense of the word for him and the fact that his other two co-accused were sentenced to a lesser term of imprisonment I would reduce the sentence to a similar term of two years. Having regard to the reasons I have earlier stated, the sentence will run from the same date as the sentences in respect of the other two accused.

Sentence reduced.

Solicitors: *Advani & Hoo.*